STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF RHODE ISLAND STATE LABOR RELATIONS BOARD -AND- CITY OF PAWTUCKET	CASE NO: ULP-5880

DECISION AND ORDER

TRAVEL OF CASE

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board") as an Unfair Labor Practice Complaint (hereinafter "Complaint") issued by the Board against the City of Pawtucket (hereinafter "Employer") based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated September 21, 2007, and filed on September 24, 2007 by RI Council 94, AFSCME, AFL-CIO (hereinafter "Union"). The Charge alleged violations of R.I.G.L. 28-7-13 (6) and (10) as follows:

> "Representatives for the City of Pawtucket and for Council 94 bargained for a successor Collective Bargaining Agreement to the agreement which had expired on June 30, 2006. The parties had approximately 25 negotiating meetings over approximately 11 months. The parties reached a Tentative Agreement on May 29, 2007 for 2 Contracts which were negotiated as a "package." The 2 Contracts were for the periods of July 1, 2006 through June 30, 2007 and July 1, 2007 through June 30, 2010. The Mayor of the City approved the Contracts as a package and the membership of the Union ratified the "package" Agreements on April 19, 2007. The Pawtucket City Council is now refusing to approve the package agreements by approving only the 1 year Agreement (July 1, 2006-June 30, 2007) but not approving the 3 year Agreement (July 1, 2007-June 30, 2010) The 2 Agreements were bargained on the basis of being a package of 2 Agreements."

Following the filing of the Charge, an informal hearing was conducted by the Board's agent on November 28, 2007. On April 24, 2008, the Board issued its Complaint, as follows:

> "The Employer violated R.I.G.L. 28-7-13 (6) and (10) when it negotiated two (2) proposed Collective Bargaining Agreements for the period of July 1, 2007-June 30, 2010, as a combined package, but then undertook separate ratification votes of the proposed collective bargaining agreements."

The Employer's Answer to the Complaint was dated May 2, 2008. The matter was heard formally on June 3, 2008. Representatives from both the Union and the Employer were in attendance and had full opportunity to present evidence and to examine and cross-examine witnesses. Both the Employer and the Union submitted post-hearing briefs.

FACTUAL SUMMARY AND DISCUSSION

The facts in this case are not in dispute. The Employer and the Union have long been parties to a series of collective bargaining agreements governing the City's employees. On or about December 14, 2005, the Union notified the City of its desire to negotiate a successor Collective Bargaining Agreement for the Contract which was due to expire on June 30, 2006. On or about May 1, 2006, the parties commenced negotiations for a successor agreement. The negotiations for this successor agreement spanned several months. Finally, in January 2007, the Union suggested to the City that the parties consider negotiating for a total of a four (4) year period, over the course of two (2) Contracts. The first Contract would be for the one (1) year period of July 1, 2006 through June 30, 2007; and the second Contract would be for the period of July 1, 2007 through June 30, 2010.

Due to the time and expense of the negotiation process, the parties agreed that such an approach would make sense for both sides. Both parties repeatedly acknowledged throughout the proceedings that the total span of time for which they were negotiating was four (4) years, but that the terms would have to be written into two (2) separate agreements, due to the restrictions of R.I.G.L. 28-9.4-5, which prohibits the execution of labor Contracts with municipal employees beyond a three (3) year period. In addition, at hearing, both parties acknowledged that the Pawtucket City Charter required ratification of all labor Contracts by the City Council.

The parties held approximately twenty-four (24) negotiating sessions within the eleven (11) month period from May 2006 to April 2007. On April 13, 2007, the parties completed negotiations, and executed a "Tentative Agreement" (hereinafter referred to as "TA") which was drafted by Counsel for

the Employer. [The TA was submitted into evidence as Union Exhibit #2.] Thereafter, the parties drafted two (2) separate Collective Bargaining Agreements which were signed on May 9, 2007.

On June 4, 2007, the City Council's Finance Committee wrote to Pawtucket Mayor James E. Doyle advising him that the Committee was recommending approval of the one (1) year Contract for the period July 1, 2006 through June 30, 2007, as well as a corresponding pay plan ordinance. The Committee further advised the Mayor that the Finance Committee "Laid on the Table", the proposed Contract for the period July 1, 2007 through June 30, 2010 and requested the Mayor to have his administration contact Union officials to re-open negotiations, prior to any vote to ratify the proposed three (3) year Contract. (See Union Exhibit #3) The Union refused to re-open negotiations. In September 2007, the City Council voted to ratify the one (1) year Contract, but failed to ratify the three (3) year Contract. (See Joint Exhibit #2, Minutes of City Council meeting held September 5, 2007)

POSITION OF THE PARTIES

The Union argues that the City's refusal to present the Tentative Agreement as one "package" to the City Council for approval constitutes bad faith bargaining. The Union further contends that the parties' Tentative Agreement and Collective Bargaining Agreement for July 1, 2006 through June 30, 2007 was only enforceable if the entire Tentative Agreement (which included the second, three (3) year Contract) was ratified by the City Council. Since the City Council did not accept the entire Tentative Agreement, which included terms for two (2) separate Contracts spanning a four (4) year period, then the parties did not have enforceable Contract terms for the one (1) year term.

The City argues that its actions are completely within its rights and that it had an enforceable one (1) Contract which it had every right to implement. The City argues that both parties knew they were negotiating two (2) entirely separate Agreements because state law prohibits the execution of municipal labor

Contracts with a duration of greater than three (3) years.[1] The City further argues that it was legally constrained form considering the two (2) Collective Bargaining Agreements together as a "package" without rendering R.I.G.L. 28-9.4-5 and Section 2-310 of the City Charter (which provides ratification authority to the City Council) meaningless. The City also argues that the remedy the Union seeks, ratification of the three (3) year labor Contract, is beyond the authority of the Board.

DISCUSSION

The Board is well aware that countless Municipal Contract disputes have been settled by negotiating separate multi-year Contracts at one time. Typically, this occurs, just as in the instant case, when negotiations have continued for an extended period of time, without success. The Board, however, does not recall having had the occasion to address this particular issue, which in this case, is presented within the context of a disturbing fact pattern.

There can simply be no question, whatsoever, that both the Union and the Employer knew they were negotiating terms and conditions of employment that would span a four (4) year period of time. This is evidenced both by an abundance of testimony and documentary evidence, [such as the parties handwritten notes referring to years, 1,2,3, and 4] as well as arguments by both parties in their briefs to this board.[2] The question becomes whether the *instruments* by which those four (4) year terms are implemented, to wit, the one (1) year Contract, followed by a three (3) year Contract, can be considered or enacted seriatim, in light of the TA.

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[1] R.I.G.L. 28-9.4-5 It shall be the obligation of the municipal employer to meet and confer in good faith with the representative or representatives of the negotiating or bargaining agent within ten (10) days after receipt of written notice from the agent of the request for a meeting for negotiating or collective bargaining purposes. This obligation includes the duty to cause any agreement resulting from negotiation or bargaining to be reduced to a written Contract; provided, that no Contract shall exceed the term of three (3) years. Failure to negotiate or bargain in good faith may be complained of by either the negotiating or bargaining agent or the municipal employer to the state labor relations board, which shall deal with the complaint in the manner provided in Chapter 7 of this title. An unfair labor practice charge may be complained of by either the bargaining agent or employer's representative to the state labor relations board, which shall deal with the complaint in the manner provided in Chapter 7 of this title.

[2] There is no suggestion that the parties were not engaging in good faith efforts during the eleven (11) months of negotiations. Indeed, it appears to the Board, simply by the sheer number of meetings, that the parties were working hard to secure agreement on terms and conditions of employment for the City's employees. One of the problems, however, with the process, is that the parties engaging in the negotiating do not have the final say. Each side must present the TA to others for final ratification.

To answer this question, the Board looks to both the TA executed by the parties and ratified by the Union membership, the terms of R.I.G.L. 28-9.4-5, as well as the documented actions of the parties during negotiations. The Board is also cognizant of the common negotiating strategies used in collective bargaining of making concessions in one (1) year of a Contract, with a trade or payoff coming in another year of the Contract.

The TA (Union Exhibit #2) states in the heading: "Contract Effective July 1, 2006 - June 30, 2010." The 14 page TA consists of the preamble clauses and three (3) numbered sections:

"This Tentative Agreement is entered into this 13th day of April, 2007, by and between the City of Pawtucket (hereinafter "City") and RI Council 94, AFSCME, AFL-CIO on behalf of its Local 1012 (hereinafter "Union").

Whereas, the most recent collective bargaining agreement between the City and the Union expired on June 30, 2006; and

Whereas, the City and the Union commenced collective bargaining negotiations on May 1, 2006 for a successor collective bargaining agreement; and

Whereas, the City and Union have negotiated two successive bargaining agreements, the first for the term July 1, 2006 to June 30, 2007, and the second for term July 1, 2007 to June 30, 2010; and

Whereas, the City and Union acknowledge that these agreements are subject to ratification by the membership of Local 1012 and the approval of the Pawtucket City Council (the "City Council").

Now, therefore, for good and valuable consideration, the exchange of which is hereby acknowledged by the parties, it is hereby agreed as follows:

1) Subject to ratification by the members of the Union and the approval of the City Council, it is hereby agreed that the collective bargaining agreement between the City and the Union shall be revised for the term July 1, 2006 to June 30, 2007, as follows:

[Changes to Articles 5, 6, 7, 9, 10, 11, 14, 15, 25, 32, 36, 42, 43, 44 set forth]

2) Subject to ratification by the members of the Union and the approval of the City Council, it is hereby agreed that the collective bargaining agreement between the City and the Union shall be revised for the term July 1, 2006 to June 30, 2007, as follows:

[Changes to Articles 14 and 34 of the prior expired Contract, as well as, as well as changes to Article 36 of the one (1) year Collective Bargaining Agreement] (June 1, 2006 - June 30, 2007)

3) The City agrees that upon receiving written notice from the Union that the bargaining unit has ratified the Collective Bargaining Agreements for the periods July 1, 2006 June 30, 2007 and July 1, 2007 - June 30, 2010, the parties will prepare ***a new Collective Bargaining Agreement*** to be presented to the City Council for approval." (Emphasis added herein).

The Board finds that the TA is a complete document which cannot be selectively picked apart by either party. The TA is clear that the four (4) years of terms and conditions of employment which have been tentatively agreed upon by the parties, will be implemented via the ***mechanism*** of two (2) separate successive Collective Bargaining Agreements. However, no implementation will occur unless all the terms of the Tentative Agreement have been accepted by ratification.

The City's Chief Negotiator, Robert Brooks Esq, testified that the Tentative Agreement, as well as the two (2) proposed separate labor Contracts, which would implement the terms of the Tentative Agreement, were all submitted to the City Council. (TR. p. 63) There was no testimony as to why the two (2) labor Contracts were submitted at the same time as the Tentative Agreement. To the Board, this was putting the cart before the horse and it was this decision that gave rise to the later problems. Had only the TA been submitted, then the Council would have acted on the TA in its entirety, as it had been negotiated by the parties. Until the Council agreed to all the terms in the TA, there was no need to have either Collective Bargaining Agreement prepared for signature. The Board does not understand how having the City Council vote on the TA could

violate the provisions of R.I.G.L. 28-9.4-5, as suggested by the City. Voting to accept a TA, even one (1) that spans four (4) years, is not the execution of a written Contract. Had the City Council voted to ratify the TA, then the two (2) separate labor Contracts could later be signed, as ministerial acts to implement the TA. The Board finds, therefore, that the City violated 28-7-13 (6) and (10) by voting on the two (2) labor Contracts separately prior to voting to ratify the TA.

As a remedy for this violation, the Board hereby orders the Employer to cease and desist with implementing any terms which were set forth in the Tentative Agreement, unless and until the Tentative Agreement is ratified in its entirety by the City Council. The Employer is also hereby ordered, to recommence good faith bargaining with the Union for a successor Agreement within thirty (30) days from the date of this decision. By successor Agreement, we mean beginning with the term of July 1, 2006. The Board does not have the authority to order the City to ratify any particular document or any terms or conditions, or length of agreement, and will decline to order the Employer to bargain for a Contract with any specific duration.

FINDINGS OF FACT

1) The City of Pawtucket is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
2) The Union is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection; and, as such, is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.
3) On or about December 14, 2005, the Union notified the City of its desire to negotiate a successor Collective Bargaining Agreement for one which was due to expire on June 30, 2006.
4) On or about May 1, 2006, the parties commenced negotiations for a successor Agreement. The negotiations for this successor Agreement spanned several months. Finally, in January 2007, the Union suggested to the City that the parties consider negotiating for a total of a four (4) year

period, over the course of two (2) Contracts. The first Contract would be for the one (1) year period of July 1, 2006 through June 30, 2007 and the second Contract would be for the period of July 1, 2007 through June 30, 2010.

5) The parties held approximately twenty-four (24) negotiating sessions within the eleven (11) month period from May 2006 to April 2007.

6) On April 13, 2007, the parties had completed negotiations, and had executed a "Tentative Agreement" which was drafted by Counsel for the Employer. Thereafter, the parties drafted two (2) separate Collective Bargaining Agreements which were signed on May 9, 2007.

7) On June 4, 2007, the City Council's Finance Committee wrote to Pawtucket Mayor James E. Doyle advising him that the Committee was recommending approval of the one (1) year Contract for the period July 1, 2006 through June 30, 2007, as well as a corresponding pay plan ordinance. The Committee further advised the Mayor that the Finance Committee "Laid on the Table", the proposed Contract for the period July 1, 2007 through June 30, 2010 and requested the Mayor to have his administration contact Union officials to re-open negotiations, prior to any vote to ratify the proposed three (3) year Contract. The Union refused to re-open negotiations.

8) In September 2007, the City Council voted to ratify the one (1) year Contract, but failed to ratify the three (3) year Contract.

9) The City Council did not vote on the Tentative Agreement, as signed on April 13, 2007.

CONCLUSION OF LAW

1) The Union has proven, by a fair preponderance of the credible evidence, that the Employer committed a violation of R.I.G.L. 28-7-13 (6) or (10).

ORDER

1) The Employer is hereby ordered to cease and desist from the unilateral implementation of any terms which were set forth in the Tentative Agreement, unless and until the Tentative Agreement is ratified in its entirety by the City Council.

2) The Employer is also hereby ordered to recommence good faith bargaining with the union for a successor agreement within thirty (30) days from the date of this decision.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF	:	
RHODE ISLAND STATE LABOR RELATIONS BOARD	:	
-AND-	:	CASE NO: ULP-5880
CITY OF PAWTUCKET	:	

NOTICE OF RIGHT TO APPEAL AGENCY DECISION PURSUANT TO R.I.G.L. 42-35-12

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of ULP No. 5880 dated March 26, 2009 may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **March 26, 2009**.

Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

Dated: March 26, 2009

By: _____
Robyn H. Golden, Administrator

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank Montanaro, Member

Gerald S. Goldstein, Member (Dissent)

Ellen L. Jordan, Member (Dissent)

John R. Capobianco, Member

Elizabeth S. Dolan, Member

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: March 26, 2009

By: _____
Robyn H. Golden, Administrator

ULP- 5880